

**THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO. 2:06-CV-49 (F)**

BLACKWATER SECURITY)
CONSULTING, LLC, a Delaware Limited)
Liability Company; BLACKWATER)
LODGE AND TRAINING CENTER, INC.,)
a Delaware Corporation,)

Plaintiffs/Petitioners,)

v.)

RICHARD P. NORDAN, as Ancillary)
Administrator for the separate Estates of)
STEPHEN S. HELVENSTON, MIKE R.)
TEAGUE, JERKO GERALD ZOVKO and)
WESLEY J.K. BATALONA,)

Defendant/Respondent.)

**MOTION TO SHORTEN TIME TO
RESPOND AND MOTION FOR
EXPEDITED HEARING OR RULING**

COMES NOW Defendant Richard P. Nordan, as the Ancillary Administrator of the separate Estates of STEPHEN S. HELVENSTON, MIKE R. TEAGUE, JERKO GERALD ZOVKO and WESLEY J.K. BATALONA in the above-entitled action, and hereby moves the Court for an Order shortening the time for Plaintiffs to respond to the concurrently-filed Emergency Motion for Reconsideration As the Court Lacks Subject Matter Jurisdiction and for an expedited hearing or ruling on said motion. An order shortening time to respond and for expedited hearing or ruling is necessary to prevent the Defendant from suffering irreparable harm.

This motion is based on the following grounds:

1. The court previously granted Plaintiffs' petition to compel arbitration and ordered

the parties to arbitrate based upon the understanding that there was diversity of citizenship between the parties and that the Court had subject matter jurisdiction over the case.

2. Newly discovered evidence reveals that the Plaintiffs' arbitration claim is against the Defendant *individually and personally*, and therefore the Defendant's citizenship must be considered to determine whether diversity exists.

3. Since the Plaintiffs and the Defendant are all residents of the State of North Carolina, there is no diversity of citizenship, and the Court lacked subject matter jurisdiction to order the parties to arbitration.

4. The arbitration company in which Blackwater initiated its claim, the International Centre for Dispute Resolution ("ICDR"), is continuing to prosecute Blackwater's claim, despite the pending motion for reconsideration for lack of subject matter jurisdiction. The ICDR will be conducting a Preliminary Hearing as early as **Monday, May 14, 2007**.

5. The Defendant will be irreparably harmed if the Preliminary Hearing proceeds (and his substantive rights affected), while he is awaiting a ruling from this Court as to whether the Order compelling him to arbitration will be vacated and the instant federal action dismissed for lack of subject matter jurisdiction.

6. The pending motion for reconsideration *alternatively* seeks clarification of the Court's Order, as Blackwater is continuing to litigate its arbitration proceeding in a manner inconsistent with this Court's Order directing the parties "to proceed with arbitration in the manner provided for in the Service Agreements."

7. The Defendant understands and truly appreciates the Court's busy schedule, and would not otherwise seek to "jump to the front of the line," except that the pending motion for reconsideration involves the critical issue of subject matter jurisdiction and the Defendant's

rights will be substantially prejudiced if the Preliminary Hearing proceeds on **May 14, 2007**, prior to a ruling and/or clarification from this Court.

8. The shortened time frame is justified, in that the ICDR will be conducting a preliminary hearing as early as **May 14, 2007**, and to afford the Plaintiffs' the statutory 20 days to file a response brief would completely frustrate the issue of determining subject matter jurisdiction prior to the Defendant's substantives rights being affected at the Preliminary Hearing.

9. It is respectfully requested that the Court grant this motion to shorten time and order the Plaintiffs to **file and electronically serve any response to the pending motion for reconsideration no later than Tuesday, May 8, 2007, by 5:00 p.m. (Eastern).**

10. Defendant also respectfully requests that the Court order any reply to the Plaintiffs' response to be **filed and electronically served no later than Wednesday, May 9, 2007, by 5:00 p.m. (Eastern).**

11. This shortened briefing schedule will afford the Court time to review the briefs and either set a hearing on the motion for reconsideration or issue a ruling thereon by **Friday, May 11, 2007.**

12. An expedited ruling by that date will timely advise the parties as to whether the Order compelling arbitration has been vacated, or alternatively, will clarify the proper arbitration forum and rules under which the parties are to proceed (prior to the Preliminary Hearing that may be held as early as **Monday, May 14, 2007.**

In support of this motion to shorten time and motion for expedited hearing or ruling, Defendant submits the attached Memorandum of Law.

WHEREFORE, Defendant, by his undersigned attorneys, moves this Court for an Order

(1) directing the Plaintiffs to file and electronically serve any response to the pending Motion for Reconsideration not later than Tuesday, May 8, 2007, by 5:00 p.m (Eastern), and (2) directing the Defendant to file and electronically serve any reply brief not later than Wednesday, May 9, 2007, by 5:00 p.m. (Eastern).

WHEREFORE, Defendant also *respectfully* requests a hearing or ruling on the pending Motion for Reconsideration based on lack of subject matter jurisdiction by Friday, May 11, 2007.

This 4th day of May, 2007.

CALLAHAN & BLAINE, APLC

By: /s/ Marc P. Miles
DANIEL J. CALLAHAN (Cal. Bar No. 91490)
BRIAN J. McCORMACK (Cal. Bar No. 167547)
MARC P. MILES (Cal. Bar No. 197741)
3 Hutton Centre Drive, Suite 900
Santa Ana, California 92707
(714) 241-4444
Fax: (714) 241-4445
Attorneys for Defendant
RICHARD P. NORDAN, as the Ancillary Administrator
of the separate Estates of STEPHEN S.
HELVENSTON, MIKE R. TEAGUE, JERKO GERALD
ZOVKO and WESLEY J.K. BATALONA

KIRBY & HOLT, LLP

By: /s/ David F. Kirby
DAVID F. KIRBY (N.C. Bar # 7841)
WILLIAM B. BYSTRYNSKI (N.C. Bar # 20883)
P.O. Box 31665
Raleigh, North Carolina 27622
(919) 881-2111
Fax: (919) 781-8630
LR 83.1 Counsel
Attorneys for Defendant
RICHARD P. NORDAN, as the Ancillary Administrator of
the separate Estates of STEPHEN S. HELVENSTON,
MIKE R. TEAGUE, JERKO GERALD ZOVKO and
WESLEY J.K. BATALONA

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing **Motion to Shorten Time to Respond and Motion for Expedited Hearing or Ruling** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Kirk G. Warner
Attorney for Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc.
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP
P. O. Box 2611
Raleigh, NC 27602

depositing a copy hereof, postage prepaid, in the United States mail, addressed to:

Michael P. Socarras, Sr.
Attorney for Blackwater Security Consulting, LLC and Blackwater Lodge and Training Center, Inc.
McDermott Will & Emery, LLP
600 Thirteenth Street, NW
Washington, DC 20005-3096

David S. Coats
Bailey & Dixon, L.L.P.
P. O. Box 1351
Raleigh, NC 27602

This the 4th day of May, 2007.

/s/David F. Kirby
David F. Kirby
Kirby & Holt, L.L.P.